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12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 SONY INTERACTIVE ENTERTAINMENT  
16 LLC, a California limited liability company,

17 Plaintiff,

18 v.

19 ERIC DAVID SCALES (doing business as  
20 Blackcloak13),

21 Defendant.

Case No.:

COMPLAINT FOR INJUNCTIVE RELIEF  
AND DAMAGES BASED ON  
COPYRIGHT INFRINGEMENT and  
VIOLATION OF THE DIGITAL  
MILLENNIUM COPYRIGHT ACT

22 Plaintiff Sony Interactive Entertainment LLC (“SIE”) files this complaint against  
23 Defendant Eric David Scales (“Defendant” or “Scales”), alleging as follows:

24 **INTRODUCTION**

25 1. This is an action for injunctive relief and damages based on Defendant’s acts of  
26 (a) copyright infringement, and (b) violation of the “trafficking” provisions of the Digital  
27 Millennium Copyright Act, 17 U.S.C. § 1201 *et seq.* (“DMCA”).  
28

**JURISDICTION AND VENUE**

2. This Court has subject-matter jurisdiction over SIE’s claims of copyright infringement and violation of the Digital Millennium Copyright Act pursuant to 17 U.S.C. § 501, 17 U.S.C. § 1201, 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a).

3. This Court has personal jurisdiction over Defendant because he resides in California and because he is doing business in California and has marketed, offered to sell, sold, and distributed infringing and unlawful products and services in California. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because, on information and belief, Defendant is a resident of this District and a substantial part of the events giving rise to SIE’s claims occurred in this District.

**PARTIES**

4. SIE is a California limited liability company with its principal place of business in San Mateo, California. SIE markets and sells the PlayStation®4 computer entertainment console system (“PS4”) and PS4-compatible video games, among other products and services.

5. Defendant is an individual who has marketed, sold, and distributed “jailbroken” PS4 consoles that: (a) contain “pirated” (unauthorized) copies of PS4-compatible video games, and (b) were produced and designed for purposes of, and/or were marketed by Defendant for use in, circumventing technological protection measures that, in the ordinary course, effectively ensure that PS4 systems will not play “pirated” (unauthorized) copies of PS4-compatible video games. Defendant also offers “PS3/4” jailbreaking services on his website at <http://foxhoundoutfitters.wixsite.com/ps3-jailbreak-mods>.

**FACTS COMMON TO ALL CLAIMS**

**I. SIE, PS4 CONSOLES, AND PS4 VIDEO GAMES**

**A. SIE and PS4**

6. SIE is a global leader in interactive computer entertainment. Chief among the products SIE sells today are PS4 systems and PS4-compatible video games. The PS4 system features a computer hardware console and an associated handheld controller that consumers

1 can use to, among other things, play video games. PS4 has enjoyed great success throughout  
 2 the United States and the world. Since PS4 launched in 2013, over 80 million PS4 consoles  
 3 have been sold worldwide. Hundreds of PS4-compatible video games are available to play on  
 4 the PS4 console. Authorized PS4-compatible video games typically sell for prices ranging  
 5 between about \$20.00 and \$60.00 per game.

6 **B. SIE's copyrights in PS4-compatible video games**

7 7. SIE and its Tokyo-based sister company Sony Interactive Entertainment Inc.  
 8 ("SIEI") each has produced, published, and distributed numerous PS4-compatible video  
 9 games. All of these video games consist of or include large amounts of creative  
 10 audiovisual material, stories, characters, and other matter that are wholly original to  
 11 SIE and SIEI and are subject to copyright. The U.S. Copyright Office has issued  
 12 Copyright Registration Numbers to SIE and SIEI for PS4 video games, including for the  
 13 following game titles: (a) *God of War* (U.S. Copyright Registration No. PA000215052,  
 14 registered to SIE); (b) *Helldivers* (U.S. Copyright Registration No. PA0002117608, registered  
 15 to SIE); and (c) *Everybody's Golf* (U.S. Copyright Registration No. PA0002111899, registered  
 16 to SIEI). SIE owns the copyrights in *God of War* and *Helldivers*, and it is the exclusive  
 17 licensee of the copyrights in *Everybody's Golf* in the United States, under a license from SIEI,  
 18 and it is authorized by SIEI to bring suit for infringement of those copyrights. (Collectively,  
 19 the PS4-compatible video games for which SIE owns, or is the exclusive licensee in the  
 20 United States of, all copyright rights are referred to herein as "First-Party PS4 games"). SIE  
 21 and SIEI have made, and continue to make, substantial investments in the design,  
 22 development, testing, manufacturing, marketing and distribution of their First-Party PS4  
 23 games.

24 8. In addition to publishing First-Party PS4 games, SIE has authorized and licensed  
 25 certain third-party companies to publish PS4-compatible video games ("Third-Party PS4  
 26 games"). These third-party publishers have published hundreds of PS4-compatible video  
 27 games. SIE is an authorized distributor in the United States of Third-Party PS4 games.  
 28

1           9. All First-Party PS4 games and Third-Party PS4 games include copyrighted  
 2 computer code known as PlayStation® Branding and Notices Software Program Code (“PS  
 3 Program Code”). The PS Program Code is an original work of authorship constituting  
 4 copyrightable subject matter. The U.S. Copyright Office has issued Copyright Registration  
 5 No. TX0008589872 for the PS Program Code to SIEI, and SIEI has granted SIE the exclusive  
 6 right to use, license, and bring suit for infringement of, SIEI’s copyrights in the PS Program  
 7 Code in the United States.

### 8           **C. SIE’s Technological Protection Measures**

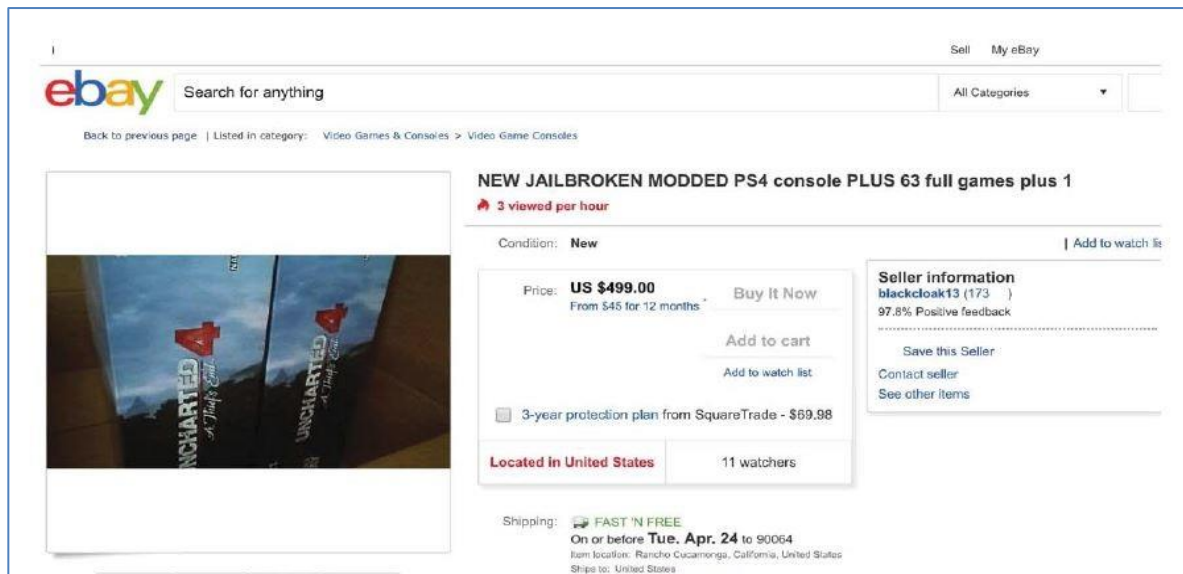
9           10. Software piracy—the unauthorized copying and use of software—is an industry  
 10 wide problem that is estimated to cost the software industry millions of dollars in lost revenue  
 11 every year.

12           11. To guard against piracy of PS4 video game software, PS4 consoles are designed  
 13 and manufactured to include certain technological protection measures (“TPMs”) embodied in  
 14 PS4 system software. In the ordinary course of operation, these TPMs effectively prevent a  
 15 PS4 from playing any unauthorized copy of a video game. These TPMs can be analogized to a  
 16 gatekeeper: the gatekeeper allows authorized copies of video games to pass, and thus be  
 17 played, but blocks all unauthorized copies of video games from passing and being played.

## 18           **II. DEFENDANT’S UNLAWFUL CONDUCT**

19           12. Defendant has marketed, sold, and distributed “jailbroken” (a/k/a “modded”) PS4  
 20 consoles that (a) contain, on their internal hard drives, unauthorized digital copies of PS4  
 21 First-Party games and Third-Party games; and (b) are primarily designed or produced for the  
 22 purpose of, and/or were marketed by Defendant for use in, circumventing the PS4 system  
 23 TPMs that, in the ordinary course of operation, effectively prevent a PS4 from playing pirated  
 24 copies of PS4-compatible video games.

25           13. Specifically, in April 2018, Defendant—under the eBay handle “blackcloak13” —  
 26 listed for sale on eBay a jailbroken PS4 console that Defendant advertised as a “NEW  
 27 JAILBROKEN MODDED PS4 console PLUS 63 full games plus 1.” A screenshot of  
 28 Defendant’s eBay listing is reproduced below:



In his eBay listing, Defendant stated that the “Jailbroken Modded PS4 console” is “FULLY JAILBROKEN/MODDED,” “COMES WITH MY CUSTOM PRINTED DETAILED INSTRUCTIONS,” will enable the purchaser “TO PLAY ANY GAME YOU WANT,” comes with “65 GAMES INSTALLED TO GET YOU STARTED,” and “IT’S TIME TO ENJOY ALL GAMES FREE.” In addition, Defendant highlighted his website at “<http://foxhoundoutfitters.wixsite.com/ps3-jailbreak-mods>,” through which he advertised he can be contacted for help with jailbroken consoles.

14. SIE, through an agent, purchased the jailbroken PS4 console described above from Defendant via eBay in April 2018. A package containing the jailbroken PS4 console was delivered to SIE’s agent. It bears the following return name and address: “Eric Scales, [REDACTED], RCH Cucamonga, CA 91730.” The hard drive of this PS4 console contains unauthorized digital copies of over 60 PS4 video games, including First-Party PS4 games *Everybody’s Golf* and *Helldivers*, and numerous Third-Party PS4 games such as *EA SPORTS UFC® 2*; *FlatOut 4: Total Insanity*; *Frozen Free Fall: Snowball Fight*; and *Guns, Gore & Canolli*. On information and belief, it was Defendant who copied these unauthorized video games onto the PS4’s hard drive. Defendant was not authorized by either SIE or SIEI to do so. Included in the box in which the jailbroken PS4 console was delivered was a set of

1 instructions that provides, among other things, directions on how to install additional  
2 unauthorized PS4 video games onto the hard drive of the console, as well as a website address  
3 to an instructional video on “how to run fake pkg games!” and a website address from which  
4 additional unauthorized PS4 video games are available for download.

5 15. Through inspection, SIE has confirmed that the PS4 console sold by Defendant  
6 has been modified to enable the user to access and run certain “exploit” software code that,  
7 when run on the PS4, circumvents technological protection measures that, in the ordinary  
8 course of operation, prevent the console from playing unauthorized copies of video games.  
9 The exploit enables the PS4 console sold by Defendant to play the 60+ unauthorized copies of  
10 video games that are contained on its hard drive.

11 16. In June 2018, Defendant—under the handle “blackcloak13”—listed another  
12 jailbroken PS4 console for sale on eBay. In his eBay listing, Defendant advertised this  
13 console as a “PlayStation4” with “5.05 firmware plus mod menus plus games.” SIE, through  
14 an agent, purchased this PS4 console from Defendant via eBay. A package containing the  
15 console was delivered to SIE’s agent. It bears the following return name and address: “Eric  
16 Scales, [REDACTED], Rancho Cucamonga, CA 91730.” Through inspection, SIE has  
17 confirmed that the hard drive of the PS4 console contains unauthorized digital copies of  
18 numerous PS4 video games, including the First-Party PS4 game *God of War*, and Third-Party  
19 PS4 games *Call of Duty: WWII*; *Guns, Gore & Cannoli*; *Need for Speed Payback*; *Sniper Elite*  
20 *4*; *Sniper Ghost Warrior 3*; and *The Surge*. On information and belief, it was Defendant who  
21 copied these unauthorized copies of video games onto the PS4’s hard drive. Defendant was  
22 not authorized by either SIE or SIEI to do so.

23 17. The second PS4 console also came with written instructions from Defendant that  
24 enable the user to access and run certain “exploit” software code that, when run on the PS4,  
25 circumvents technological protection measures that, in the ordinary course of operation,  
26 prevent the console from playing unauthorized copies of video games, such as the  
27 unauthorized video games on its hard drive. The exploit enables the PS4 console sold by  
28

Defendant to play the unauthorized copies of video games that are contained on its hard drive. Defendant's written instructions also identify a website address for an instructional video on "how to run fake pkg games!" and a website address from which additional unauthorized copies of PS4 video games are available for download.

18. Before and after June 2018 the seller named "blackclock 13"—the eBay handle used by Defendant—offered for sale on eBay other PS4 consoles with dozens of games installed on them. For instance, an eBay listing in July 2018 offered a PS4 console with 5.05 firmware and numerous installed First-Party PS4 games, including *God of War* and *Helldivers*, as well as numerous Third-Party PS4 games, including *Call of Duty: WWII* and *Sniper Elite 4*. On information and belief, SIE alleges that the PS4-compatible video games that were installed onto this and other PS4 consoles offered by Defendant were unauthorized copies of games that Defendant copied onto the console's hard drive without SIE' or SIEI's permission.

19. In addition to selling jailbroken PS4s on eBay, Defendant advertises his products and services, including "PS3/4 jailbreaks," on a website, <http://foxhoundoutfitters.wixsite.com/ps3-jailbreak-mods>. On his website, Defendant touts that he has been "jailbreaking and modding game console[s] since 2006" and advises potential customers that "you can purchase from me on eBay from seller blackcloak13":

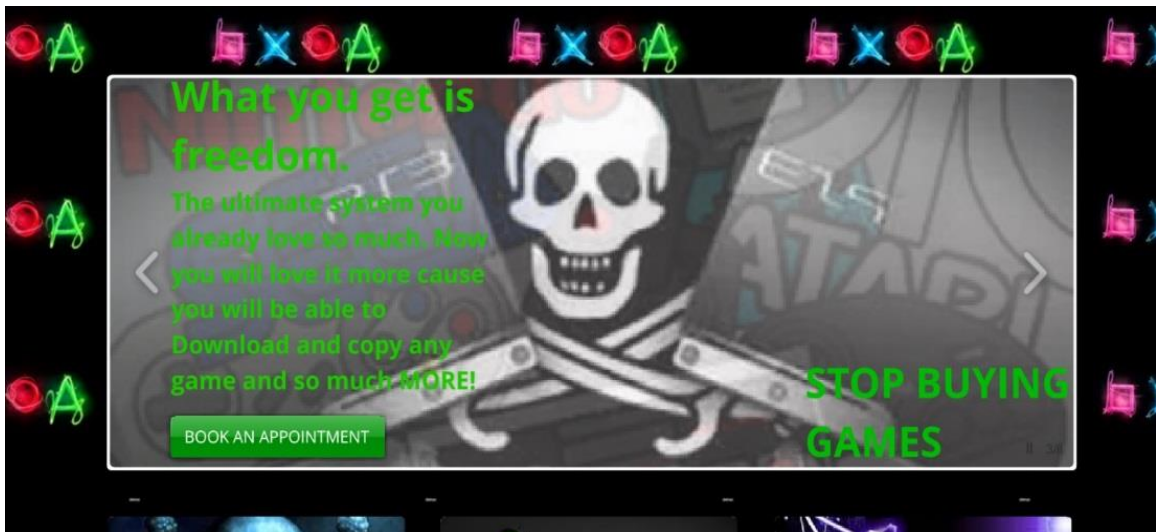




20. In the “INCLUDED WITH SERVICE” portion of Defendant’s website, Defendant offers the services shown below:



21. On Defendant’s website, where he uses the traditional “pirate” symbol of a skull and crossbones shown below, Defendant states that purchasing his services or products will enable the purchaser to “be able to Download and copy any game” and to “STOP BUYING GAMES”:





**FIRST CLAIM FOR RELIEF**

(Infringement of Copyrights in First-Party Games – Copyright Act, 17 U.S.C. § 501 *et seq.*)

22. SIE incorporates, as if fully set forth herein, each and every allegation of Paragraphs 1 through 21, above.

23. SIE is the owner of, or is the exclusive licensee in the United States under, all rights, title, and interest in the copyrights in the First-Party PS4 games contained on PS4 consoles that Defendant offered and/or sold and distributed as described above—including *God of War* (Registration No. PA000215052); *Everybody's Golf* (Registration No. PA0002111899); and *Helldivers* (Registration No. PA00021176608).

24. Defendant has infringed SIE's copyrights in First Party PS4 games, including *God of War*, *Everybody's Golf*, and *Helldivers*, by copying unauthorized First Party PS4 games onto the hard drive of PS4 consoles without SIE's authorization, and distributing the unauthorized copies of First Party PS4 games on PS4 consoles. On information and belief, Defendant's actions were knowing, deliberate, willful and in complete disregard of SIE's rights.

25. Defendant's conduct set forth above has damaged SIE, in an amount to be proven at trial.

26. On information and belief, Defendant will continue to infringe SIE's copyrights in First-Party PS4 games by copying games without authorization and/or distributing unauthorized games, thereby damaging SIE, unless enjoined by the Court.

**SECOND CLAIM FOR RELIEF**

(Infringement of Copyrights in PS Program Code – Copyright Act, 17 U.S.C. § 501 *et seq.*)

27. SIE incorporates, as if fully set forth herein, each and every allegation of Paragraphs 1 through 26, above.

28. SIE is the exclusive licensee in the United States of all rights, title, and interest in the copyrights in the PS Program Code (Copyright Registration No. TX0008589872). The PS Program Code is contained in all PS4-compatible video games, including all First-Party

1 PS4 games, including *God of War*; *Everybody's Golf*; and *Helldivers*. The PS Program Code  
 2 is also contained in all Third-Party PS4 games, including *EA Sports UFC®2*; *FlatOut 4: Total*  
 3 *Insanity*; *Frozen Free Fall: Snowball Fight*; *Guns, Gore & Cannoli*; *Need for Speed*  
 4 *Payback*; *Sniper Elite 4*, *Sniper Ghost Warrior 3*; *The Surge*; and *Call of Duty WWII*.

5 29. Defendant has infringed SIE's copyrights in the PS Program Code by copying  
 6 unauthorized First-Party PS4 games and Third-Party PS4 games (which include the PS  
 7 Program Code) onto the hard drive of PS4 consoles without SIE's authorization and  
 8 distributing the unauthorized copies of such games on PS4 consoles. SIE is informed and  
 9 believes and thereupon alleges that Defendant's actions were knowing, deliberate, willful, and  
 10 in complete disregard of SIE's rights.

11 30. Defendant's conduct set forth above has damaged SIE, in an amount to be  
 12 proven at trial.

13 31. On information and belief, Defendant will continue to infringe SIE's copyrights  
 14 in the Program Code by copying games containing the Program Code without authorization  
 15 and/or distributing unauthorized copies of such games, thereby damaging SIE, unless enjoined  
 16 by the Court.

### 17 **THIRD CLAIM FOR RELIEF**

18 (Violation of the Digital Millennium Copyright Act, 17 U.S.C. § 1201, *et seq.*)

19  
 20 32. SIE incorporates, as if fully set forth herein, each and every allegation of  
 21 Paragraphs 1 through 31, above.

22 33. Defendant violated SIE's rights under 17 U.S.C. § 1201(b) by manufacturing,  
 23 offering to the public, providing, or otherwise trafficking in circumvention devices and  
 24 services, including the "blackcloak13" PS4 consoles and the "jailbreaking" or "modding"  
 25 services offered on Defendant's website. These circumvention devices and services are  
 26 primarily designed and produced for the purpose of circumventing protection afforded by  
 27 technological measures that effectively protect SIE's rights as a copyright holder in  
 28 audiovisual and computer software program works, including the PS4-compatible video

1 games and the PS Program Code. These circumvention devices and services are produced,  
 2 marketed and distributed by Defendant with knowledge of their use in circumventing  
 3 protection afforded by TPMs that, in the ordinary course of operation, protect SIE's exclusive  
 4 copyright rights in PS4-compatible video games and the PS Program Code, or portions  
 5 thereof, by, among other things, preventing the playing or displaying of unauthorized PS4-  
 6 compatible video games, and by preventing the reproduction and distribution of unauthorized  
 7 PS4-compatible video games.

8 34. SIE is informed and believes and thereupon alleges that Defendant's actions  
 9 were knowing, deliberate, willful and in complete disregard of SIE's rights.

10 35. As a direct and proximate result of Defendant's conduct set forth above, SIE has  
 11 been injured and damaged in an amount to be proven.

12 36. The above actions carried out by Defendant constitute violations of SIE's rights  
 13 under 17 U.S.C. § 1201(b). Defendant has violated and, on information and belief, will  
 14 continue to violate SIE's rights under 17 U.S.C. § 1201(b) unless enjoined by the Court.

#### 15 **PRAYER FOR RELIEF**

16 WHEREFORE, SIE prays as follows:

- 17 1. That judgment be entered in favor of SIE on all claims for relief;
- 18 2. That the Court permanently enjoin Defendant and his agents, servants, employees,  
 19 successor and assigns, and all other persons acting in concert with Defendant from:
  - 20 a. marketing, offering, selling, transferring, advertising, promoting,  
 21 developing, manufacturing, importing, providing or otherwise  
 22 trafficking in any products that infringe or contribute to the  
 23 infringement of SIE's intellectual property rights, including its  
 24 copyrights in PS4-compatible video games and the PS Program Code,  
 25 or to participate in or facilitate any such activity;
  - 26 b. directly or indirectly infringing, or enabling or contributing to  
 27 infringement of, any copyright that SIE owns or is the exclusive  
 28

licensee of, including copyrights in First-Party PS4 games and in the PS Program Code;

- c. marketing, offering, selling, transferring, advertising, promoting, developing, manufacturing, importing, providing or otherwise trafficking in – via eBay, the website <http://foxhoundoutfitters.wixsite.com/ps3-jailbreak-mods> or any other means or channels –any products or services produced or designed to circumvent the technological measures that SIE employs to protect its exclusive copyright rights in or to PS4-compatible video games and the PS Program Code, including, but not limited to, (1) “jailbroken” or “modded” PS4 consoles, and (2) jailbreaking or “modding” services;
- d. infringing SIE’s rights under the Copyright Act, 17 U.S.C. § 501 *et seq.*; and
- e. violating SIE’s rights under the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201 – 1205.

- 3. That judgment be entered in favor of SIE and against Defendant for all damages sustained by SIE as a result of Defendant’s copyright infringement under the Copyright Act;
- 4. That judgment be entered in favor of SIE and against Defendant for all profits received by Defendant due to Defendant’s copyright infringement under the Copyright Act;
- 5. That judgment be entered in favor of SIE and against Defendant for statutory damages based on Defendant’s copyright infringement under the Copyright Act;
- 6. That judgment be entered in favor of SIE and against Defendant for all damages sustained by SIE as a result of Defendant’s violation of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201 – 1205;

- 1 7. That judgment be entered in favor of SIE and against Defendant for all profits
- 2 received by Defendant due to Defendant's violation of the Digital Millennium
- 3 Copyright Act, 17 U.S.C. §§ 1201 – 1205;
- 4 8. That judgment be entered in favor of SIE and against Defendant for statutory
- 5 damages based on Defendant's violation of the Digital Millennium Copyright Act, 17
- 6 U.S.C. §§ 1201 – 1205;
- 7 9. That Defendant be required to deliver to SIE, to be held for destruction or other
- 8 disposition at the conclusion of this litigation, any and all computer hardware and
- 9 peripherals containing infringing material, and all circumvention devices, including
- 10 any jailbroken or "modded" PS4 console or hard drives, and all unauthorized PS4-
- 11 compatible video game software contained on such circumvention devices.
- 12 10. For costs of suit incurred herein;
- 13 11. For reasonable attorneys' fees to the extent permitted by law; and
- 14 12. For such other and further relief as this Court deems just and proper.
- 15

16 Dated: October 5, 2018

LEE LAW OFFICES

17 /s/Monika Pleyer Lee

18 Monika Pleyer Lee

19 Attorneys for Plaintiff

Sony Interactive Entertainment LLC